

June 26, 1958

NEW HAMPSHIRE LAW LIBRARY

OCT 01 1998

CONCORD, N.H.

Mr. Emil W. Allen, Jr.
Assistant State Librarian
Concord, New Hampshire

Dear Mr. Allen:

Some time ago you forwarded to us a letter from the Librarian of the Mt. Caesar Union Library in Center Swanzey which referred to certain practices there in effect and raised the general question whether the institution may be deemed a public library. You are particularly interested in our views on the question whether a library may properly charge a fee for the borrowing of its books while receiving tax funds from a town; and you inquire if the Library is a public library as defined in RSA 202.

I shall not restate the facts here beyond noting that the institution was chartered as a charitable corporation under G.L. (1878), c. 151, with the object, as stated,

"the formation and perpetuation of a Public Library in Swanzey for the purpose of promoting general intelligence, good morals, and a pure literature among our citizens".

The organization is under the control of Trustees and Directors elected by the membership, and it holds property, both real and personal, in its own name. Its trust funds are managed by its own Trustees.

The borrowing of books is based upon membership; and, so far as appears, membership is open to any person over eighteen years of age upon the payment of a fee of twenty-five cents. One book may be borrowed at a time for each membership card held, and a person may purchase as many membership cards as he desires. No membership fee is required of persons under eighteen years of age. These persons have free use of the library. While the fact is not clearly stated, we are led to believe that the Library maintains a reading room which may be used by any one - whether holding a membership or not - during the hours when open.

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two additional facts require notice. First, bookmobile books for adults are lent only to holders of membership cards, while juvenile bookmobile books circulate free. Second, it appears that the library operates a lending library service with respect to its newest fiction books at the rate of five cents per book per week.

The facts before us indicate rather clearly that the organization under consideration is a private voluntary corporation. This is not to suggest that the library may not be a "public library" within the commonly accepted meaning of the term, but we do wish to convey the view that the Association is not a public municipal corporation. In view of this, we feel it necessary to confine our remarks to those aspects of the matter upon which the State Library must be advised in order to perform its statutory functions. We particularly refrain from expressing any views upon changes in the organization or operation of the library which might be thought desirable, suggesting only that any steps along these lines should be taken by the institution only after consultation with its private attorneys. And we expressly withhold comment on your question concerning the propriety of the receipt by the library of funds from the Town. This matter is one lying exclusively within the interests of the Town on the one hand and the library on the other.

It appears to us that your agency would wish to be advised with respect to two statutory provisions which you administer. The one is RSA 201:7:III, relating to the Extension Division; the other RSA 201:21 dealing with the Equalization of Library Service. Under the terms of the first the Extension Division

"may supply advice and information to libraries in the state through visits, conferences, institutes, correspondence, and publications [and] shall have supervision of the traveling libraries under the direction of the state librarian."

The second authorizes the allocation of certain funds if available to "free public libraries" in order to "increase, improve, stimulate and equalize library service to the people of the state."

The recitation of the facts demonstrates that

- (1) the fee charged in connection with the membership card is nominal, and
- (2) the library offers certain of its services entirely free of charge.

Station books of the State of Ohio which are now in the possession of the State of Ohio are being sold to the public at a nominal price. It is suggested that the books be sold at a nominal price of one dollar per book. It is suggested that the books be sold at a nominal price of one dollar per book. It is suggested that the books be sold at a nominal price of one dollar per book.

With respect to the nominal quality of the fee we think it evident well beyond the requirement of proof that the sum in question could not possibly reflect the true cost of rendering service to the member. The true cost is obviously greater. To the extent of the difference the Association is obviously rendering a greater public service.

Perhaps more significant is the second consideration, viz.: the rendition of services wholly free from charge. Persons under eighteen years of age may borrow books at will without fee. The reading room is in like manner open to the public without cost of any kind. Certain of these aspects of the Library qualifies it as free and public in the most literal sense of the terms. To suggest a contrary conclusion because of the charge made in certain instances would require that the services just noted be entirely disregarded; and this would be neither required nor realistic nor appropriate.

It is clear, however, that the Commissioners of the State Library in the administration of their statutory responsibilities toward libraries throughout the State may make rules and regulations and define standards of operation to which institutions desiring to benefit must conform. These could well include the requirement that there be no fees or charges of any kind. It would seem imperative that a condition for the receipt of bookmobile books ought to be that they should circulate free of charge. We strongly recommend the early adoption of such a standard. Equalization funds ought to be allocated in such a way as to benefit only the functions of a library which are granted on a free basis to the people; and provision should be made to insure that any fee charged for any function should be at once nominal and so low as to have no possibility of resulting in the earning of a profit.

The letter which you forwarded to us is returned.

Very truly yours,

Warren E. Waters
Deputy Attorney General

WEW/aml
Encl.

original + 2 cc sent Mr. Allen